IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

ST.Rev..No. 276 of 2003

TA.590/1994 of SALES TAX APPELLATE TRIBUNAL,
.ADDL.BENCH-II, ERNAKULAM
.....

REVISION PETITIONER(ASSESSEE/APPELLANT).

M/S.TEA LAND, NAVARATNA HOUSE, VII/569,
MANTHRA ROAD, COCHIN 682 002.

BY SR. ADV. DR. K.B.MOHAMED KUTTY
SRI.K.M.FIROZ

RESPONDENT: REVENUE/RESPONDENT.

STATE OF KERALA, REP. BY SECRETARY
TO GOVERNMENT, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI MUHAMMED RAFIQ

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 02/08/2007 ALONG WITH ST.REV NO. 277 OF 2003, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & HARUN-UL-RASHID, J.

S.T.REV.Nos.276 & 277 of 2003

Dated, this the day of August, 2007

ORDER

H.L. DATTU, CJ.

The assessee before us is a firm. It is a dealer in tea. It is registered both under the Kerala General Sales Tax Act (KGST Act, for short) as well the Central Sales Tax Act (CST Act, for short).

2. The assessment orders pertain to assessment years 1981-82 and 1982-83.

3. The issues involved is under the provisions of the CST Act.

4. The assessee had filed its annual returns before the assessing authority and in that it claimed the benefit under section 5(3) of the CST Act. The said claim was rejected by the assessing authority solely on the ground that the assessee had not produced the forms prescribed under Rule 28A of the KGST Rules.

5. The assessee agitated the matter by filing an appeal before the first appellate authority. The appellate authority is of the view that the assessee is required to produce only form 18A prescribed under Rule 28A of the Rules or, in the alternative, at least form H prescribed under Rule 12(10) of the CST Rules. Aggrieved by this finding, the assessee was before the Tribunal in Appeal Nos.590 and 591 of 1995. Before the Tribunal the assessee had raised three issues for consideration and decision. In this petition we are not concerned with the first two issues. We are only concerned with the 3rd issue viz. whether the assessee is entitled for the benefit of exemption under section 5(3) of he CST Act. The Tribunal, after noticing the documents that was produced by the

assessee in support of the claim made before the assessing authority has come to the conclusion that the assessee had failed to produce form 18A as provided under Rule 28A of the KGST Rules or form H as provided under Rule 12(10) of the CST Rules or any other document to support the claim of the assessee, has rejected the assessee's appeal. Aggrieved by the order so passed, the assessee is before us in these tax revision cases filed under section 41 of the KGST Act.

6. The assessee has raised the following issues for consideration and decision of this court. They are as under:

> (1) Whether on the facts and circumstances of the case and in the light of documents produced in proof of the export of the goods in question, has the Appellate Tribunal justified in law in disallowing the claim of exemption based on Section 5 (3) of he CST Act? Is it correct to hold that Form `H'/18-A prescribed by the Rule Making Authority is mandatory for deciding the exemption under the CST Act, when there are alternative proof to establish the export sale of the same commodity?
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> (2) Whether on the facts and in the circumstances of the case has not the Appellate Tribunal committed an error in law in not holding that the production of `H' Form/Form-18A to claim exemption are only directory, especially in view of the decisions in 67 STC 440 and122 STC 134?
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> (3) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that production of Form-18A is necessary for claiming exemption under section 5(3) of the CST Act when there was no such a question before it. Is not a decision of the Appellate Tribunal in form on account of non-application of mind?"

7. Sri Dr. Mohamed Kutty, learned senior counsel appearing for the assessee, as usual, has strenuously contends before us that none of the authorities under the Act nor the Tribunal was justified in coming to the conclusion that since the assessee had not produced either form 18-A prescribed under Rule 28A of the KGST Rules or form H prescribed under Rule 12(10) of the CST Rules is not entitled to the exemption under section 5(3) of the CST Act.

8. It is further contended by the learned senior counsel that some documentary evidence was produced in support of the claim and the same requires to be accepted by the assessing authority, in order to grant the exemption under section 5(3) of the Act. In support of his contention, as usual, the learned counsel would rely upon certain decisions of this court as well as the Apex Court.

9. Sri Mohamed Rafiq, learned senior Government Pleader appearing for the Revenue, justifies the orders passed by the authorities under the Act as well as by the Tribunal.

10. Before rejecting the claim of the assessee under section 5(3) of the Act, a notice had been issued by the assessing authority to the assessee to produce documentary evidence in support of the claim made in section 5(3) of the Act. In reply to the said notice, the assessee had stated as under:

> "It is submitted that section 5(3) makes it clear that if the following three conditions were fulfilled the penultimate sale should be deemed to be in the course of export. (i) There must have been a pre-existing agreement of order to sell the goods in question to a foreign buyer, (ii) the purchase referred to in

section 5(3) must have taken place after the agreement with the foreign buyer was entered into and (iii) the purchase must have been for the purpose of complying with the pre-existing agreement or order. In the instant case all the above mentioned conditions have been satisfied beyond any shadow of doubt. We are furnishing below details of documents filed with you in support of our claim under sec.5(3).

a) sale of Tea to Tea Trading Corpn. of India, Calcutta for Rs.7206438.65 we have already filed H forms and bills of lading in respect of this sale.

b) Sale of Tea to Tea Trading Corpn of India, Calcutta for Rs.1390811.00 H Form has already been filed. The Bill of Lading in support of the H form is attached herewith.

c) sale of Tea to Anand Trading Co., Calcutta for Rs.2147121.20. The H forms against this, obtained from the exporter have been irrecoverably lost some time ago. Therefore steps are being taken for obtaining duplicate copies of these H forms by following the procedure given under the Rules. In the circumstances it is proper that 2 months time may be granted for production of H form in this case. In the meantime we are attaching export invoices and bills of lading connected with this sale.

In this regard we may also state that the entire purchases effected by M/s. Anand Trading Co., Calcutta, and the entire quantity was exported in pursuance of a foreign order has been amply proved by the assessment made by the additional Sales Tax Officer, additional 2nd circle, Mattancherry for the year 1981-82 on M/s. Anand Trading Co., vide order No.A 337/86/81-82 dated 28.5.86, true copies of which are enclosed along with copies of their purchase invoices for your kind perusal. It is thus clear that the sale effected by M/s. Anand trading Co. is covered by the provisions of sec.5(3). We are

also entitled to get exemption under sec.5(3) ."

11. A perusal of the objections filed by the assessee would clearly demonstrate that the assessee did not have form H with him, nor form 18-A as provided under the KGST Rules. The documentary evidence that was produced by the assessee was only an order of assessment made in the case of M/s. Anand Trading Company, who is supposed to be the exporter of the goods purchased from the assessee. Apart from this, no other document was produced by the assessee in support of the claim made for grant of exemption under section 5(3) of the Act. This aspect of the matter is noticed by the assessing authority and also by the Appellate Tribunal. The Appellate Tribunal at paragraph 8 of the order observes as under:

> "The 3rd and the final issue raised is to allow exemption towards sale of tea to M/s. Anand Trading Co. in the course of export under section 5(3) of CST Act. For which appellant claims to have furnished bill of lading and assessment orders of M/s.Anand Trading Co., coupled with the purchase and sales list. Appellant further contends that exemption cannot be denied only on the ground that H Form under CST Rules or Form 18A under KGST Rules were not furnished."

12. For the purpose of disposal of these revision petitions we do not intend to give finding whether Form 18A of the Rules prescribed for the purpose of claiming exemption under section 5(3) of the Act is mandatory or not, nor are we deciding whether form H prescribed under the CST Rules is a must for the purpose of claiming exemption under section 5(3) of the Act.

13. In the instant case what was produced by the assessee for claiming exemption under section 5(3) of the Act is only two documents i.e. the orders of assessment passed in the case of his purchaser viz. M/s. Anand Trading Company and the bill of lading said to have been issued by the purchaser. In our view, these documents would not indicate that the sale effected by the assessee is a sale preceding the sale in the course of export. In the absence of production of appropriate documents in support of the claim, the assessing authority is not expected to grant any exemption under section 5(3) of the Act. Keeping this aspect of the matter in view, in our opinion, the authorities under the Act as well as the Tribunal were fully justified in rejecting the claim of the assessee for exemption under section 5(3) of the Act In that view of the matter, without going to the other details of the case, the revision petitions filed by the assessee require to be rejected and they are rejected. The question of law framed by the assessee is answered against the assessee and in favour of the Revenue. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

HARUN-UL-RASHID,
JUDGE.

mt/